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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 69

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services, JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,

Appellants,

against

BARBARA JAMES, individually and on behalf of her minor child MAURICE JAMES, and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 977

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services, JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,

Appellants,

against

BARBARA JAMES, individually and on behalf of her minor child MAURICE JAMES, and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF

Argument

The gravaman of appellee's motion to affirm, as it has been from the beginning, is an assertion of her own rights while paying little or no attention to the interests of her child in a meaningful implementation of the AFDC in-

tended for his benefit. Appellee insists that because a home visit by a case worker may result in criminal prosecution, it must be accompanied by all of the trappings of the criminal law. She tries to make this position tenable by asserting that there are "alternatives" to a home visit and that machinery exists in the State to protect a neglected child, once he has been neglected.

In relying on the existence of so-called alternatives to a home visit, appellee is, of course, acknowledging her obligation to furnish information, but is seeking to restrict to her own terms the means by which this information may be acquired. As we have demonstrated in our Jurisdictional Statement (pp. 18-19), this vaunted existence of alternatives is unrealistic. Even if it were true that the doctrine that the State must accomplish its ends by the least restrictive alternative applies to cases other than First Amendment cases (see *Struve, The Less-Restrictive-Alternative Principle and Economic Due Process,* 80 Harv. L. Rev. 1463 [1967]), the exploration of such alternatives is a far more complex matter than that undertaken by the District Court or by appellee. No genuine exploration of alternatives was undertaken by the District Court, and, as we have said, the alternatives which it suggested are inadequate on their face. For example, the District Court relied on the availability of school records. Recent reports show that of the 600,000 in New York City alone on AFDC, about 450,000 were of school age and the remaining 150,000 were not. Thus, for those 150,000 children, the school record alternative is inapplicable (this also applies to the child in this case). Of the remaining children, many present a grave truancy problem for which attendance teachers often find that a visit to the home is necessary. See New York Times, February 2, 1970, pp. 1, col. 3-6, 38, col. 3. The suggestion by appellee that new provisions in the New York Family Law are ample protection for a child is erroneous. Those provisions deal with cases arising after harm has been done. The State is not required to await such an unhappy result, and indeed cannot.

The strange insistence that only the criminal law can adequately protect appellee once more ignores the interests of the child. It seeks to force a rigid procedure on what must necessarily be a flexible program and to require the exaction of criminal penalties for acts which, although they might possibly involve criminal sanction, are better handled outside that process for the benefit of everyone concerned.

Appellee is not being asked to choose between two constitutional rights. She is being asked for further necessary information to establish a statutory right belonging to her child. In this respect, reliance on *Lynumn* v. *Illinois*, 372 U. S. 528 (1963), is misplaced. Indeed, the opinion in that case is in accord with the view presented by us that if questioning is deemed coercive, any evidence could not be used in any criminal proceedings (Jurisdictonal Statement, pp. 21-22).

CONCLUSION

This Court should note probable jurisdiction and grant plenary consideration to the instant appeal.

Dated: New York, New York, February 16, 1970.

Respectfully submitted,

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